

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-009811

10/21/2015

HONORABLE KAREN A. MULLINS

CLERK OF THE COURT
M. Scott
Deputy

RACHEL A TURLEY, et al.

SEAN K MCELENNEY

v.

LEO R BEUS, et al.

DAVID B ROSENBAUM

MARTIN A ARONSON
DANIEL G DOWD
JAMES E HOLLAND JR.
MICHAEL C MANNING
ROBERT J MILLER
SARA KATHRYN REGAN
JAY A ZWEIG

MINUTE ENTRY

The Court has considered Plaintiffs' Application for Trust Reimbursement of Attorneys' Fees, Defendant Wil Cardon's Response thereto, Plaintiffs' Reply, and the brief oral argument of counsel.

Plaintiffs seek reimbursement from the Trusts for their attorneys' fees pursuant to A.R.S. §14-11004(A) or the equitable powers of the court. Plaintiffs further seeks that these attorney's fees be paid by Rio Claro, Inc. and Boa Sorte LP. The Court declines to grant this request for the following reasons:

1. This case involves between thirty and forty separate claims, counterclaims, and crossclaims alleged by and between the parties. Four claims involving Trusts have been resolved (*i.e.* Count 13 involved the 1995 Trust; Counts 14 and 15 involved the 1997 Trust; Count 16 involved the Cardon Family Trust), all in favor of Plaintiffs. However, in resolving these claims, the Court did not find that Plaintiffs suffered actual financial harm in regard to particular transactions

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involving a Trust, and there are no other findings upon which the Court could rely to determine if any of Plaintiffs' claims ultimately resulted in a benefit to any Trust.

2. While this matter has been pending for over a year, only four claims have been resolved and the Court does not know, on balance, which parties will substantially prevail. The Court cannot determine if the claims brought by Plaintiffs constitute a "good faith prosecution" under A.R.S. § 14-11004(A) until the Trust related claims are fully resolved, or substantially resolved, and the total circumstances are thus known.
3. There is no legal authority in Arizona expressly authorizing the disbursement of interim attorney's fees. A.R.S. § 14-11004(A) does not expressly authorize interim attorney's fees and in fact the "good faith prosecution" language supports an interpretation that the judicial proceeding must be resolved, or substantially resolved, before such a finding may be made.
4. Boa Sorte LP is not a party to this action and thus the Court does not have jurisdiction over that limited partnership.
5. Rio Claro, Inc. is not a trust and thus the Court lacks factual foundation at this time to order it to pay fees arising out of "trust administration".
6. Given the above, the Court declines to consider an assessment of attorney's fees based upon its inherent equitable powers.

IT IS ORDERED denying Plaintiffs' Application for Trust Reimbursement of Attorneys' Fees.